UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

In the Matter of

SAM LICHTENBERG & COMPANY, INC.

Employer/Petitioner

and

SOUTHERN REGIONAL JOINT BOARD (WORKERS UNITED, SEIU) Case 10-RM-867

Union #1

and

UNITE HERE

Union #2

DECISION AND ORDER

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

On November 23, 2009, the Employer/Petitioner filed a petition in the above-captioned case. In support of its petition, the Employer provided what it described as a collective-bargaining agreement with Unite Here Local 2524 and a competing demand for bargaining from the Southern Regional Joint Board (hereafter Southern Region) dated November 4, 2009. The Employer contends the petition is related to the well-publicized split between Unite Here and Workers United and asserts that in light of the competing claims, it is uncertain as to which labor organization it must recognize.

On December 3, 2009, I issued an Order to Show Cause asking the parties to address issues of fact and law regarding whether further processing of the petition was warranted. The Employer and Southern Region filed responses to the Order to Show Cause.

Based upon the administrative investigation of this petition, I find that: (1) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here; and (2) the Unions involved are labor organizations within the meaning of the Act, and they claim to represent certain employees of the Employer.

THE ISSUE

The issue under consideration in this matter is: Should an election be directed in this matter or should the petition be dismissed because a question concerning representation does not exist?

DECISION SUMMARY

Based on the administrative investigation conducted by the Region, including consideration of position statements submitted by the parties before and after the issuance of the Order to Show Cause[1], I find that no question concerning representation exists and thus conclude the petition should be dismissed. The rationale for my decision is set forth in detail below.

Background and Bargaining History

The Employer operates a facility in Waynesboro, Georgia, where it manufactures and distributes curtains and employs approximately 100 unit employees. In 1989, the

[1] UNITE HERE did not respond to the Order to Show Cause or present any position statement in connection with this matter.

Amalgamated Clothing and Textile Workers of America was certified as the exclusive collective-bargaining representative in Case 10-RC-13622 of all production and maintenance employees of the Employer/Petitioner at its Waynesboro, Georgia facility excluding all office clerical employees, guards and supervisors as defined in the Act. In 1995, the Amalgamated Clothing and Textile Workers of America merged with the International Ladies' Garment Workers Union to form UNITE. In 2004, UNITE merged with the Hotel Employees and Restaurant Employees International Union to form UNITE HERE.

On February 6, 2009, 14 joint boards, including the Southern Region, filed a complaint in United States District Court for the Southern District of New York requesting that the Court declare the UNITE HERE merger a failure and void the constitution and merger agreement. On February 20, 2009, the Southern Region voted to disaffiliate from UNITE HERE. On March 7, delegates to a special Southern Region meeting, including Local 2524 President Tony Atwell, voted 111 to 0 to disaffiliate from UNITE HERE. On March 11, 29 members of Local 2524, who comprised the entire union membership of the unit employees, voted unanimously to support the disaffiliation. Thereafter, between March 11 and March 20, 2009, 24 members signed a petition supporting disaffiliation and for continued representation by the Southern Region and Local 2524. On March 21, 2009, delegates of the Southern Region and other disaffiliated unions formed Workers United, a new labor organization, and authorized its executive board to affiliate with Service Employees International Union (SEIU). The next day, the executive board voted to form an autonomous conference within SEIU.

By letter dated November 4, 2009, Sandra Simpson[2], in her capacity as Georgia District Director of Workers United, gave notice to the Employer/Petitioner of a request to modify the collective-bargaining agreement. Unite Here has not made a similar request or demand.

Positions of the Parties

In its response to the Order to Show Cause, the Employer asserts that the Southern Region is the valid successor to the recognized bargaining representative, citing *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143, 147. It asserts that during negotiations for its current collective bargaining agreement, effective from 2007 through 2010, Don Rogers[3] and Simpson represented the union, that Rogers has represented the union on day-to-day issues such as grievances and that he continues to do so. It asserts that since the disaffiliation it has continued to deal with Rogers and Simpson, both of whom are now employed by Workers United. Notwithstanding the above, the Employer requests a determination as to the identity of the appropriate bargaining representative.

The Southern Region contends that after the Board certified the Amalgamated Clothing and Textile Workers Union as the employees' bargaining representative in 1989, the international union immediately relinquished its bargaining rights to the Southern Region and Local 2524. Thereafter, it asserts the international has had nothing to do with the unit. It contends Southern Region representatives, leading committees of Local 2524 members, have negotiated contracts since the certification,[4] that lower level grievances

[2] Simpson is the Southern Region Joint Board North Georgia manager.

[3] Rogers is a Southern Region Joint Board staff representative.

[4] The most recent agreement, effective by its terms from February 1, 2007, through January 31, 2010, is between the Employer/Petitioner and UNITE HERE, albeit the cover page states that the agreement is between the Employer/Petitioner and Unite Here Local

have been processed by members of Local 2524, and that higher level grievances have been handled by Southern Region representatives. In addition, the Southern Region Joint Board assigned a staff member from its North Georgia District (later, its Georgia District) to service the unit.

Southern Region contends that the history shows that it and Local 2524 have been joint bargaining representatives of the employees and not the international. It adds that with respect to the representation of employees of the Employer/Petitioner since the disaffiliation, nothing has changed - all of the officers and representatives currently representing the employees are the same as those with whom the Employer/Petitioner has dealt with for years and who have been in contact with and representing the employees in the bargaining unit. Accordingly, it asserts there is no schism or confusion as to the identity of the bargaining representative of the employees. Indeed, because Unite Here has had nothing to do with the unit and does not assert any 9(a) status, Southern Region Joint Board contends there is no question concerning representation.

As stated previously, UNITE HERE failed to furnish a position statement or a response to the Order to Show Cause.

Analysis and Conclusion

The affiliation and/or disaffiliation of a union are internal union matters governed by the union's own internal procedures. See *Tawas Industries, Inc.*, 336 NLRB 318, 319 (2001). The Board has long held that "a labor organization's disaffiliation from the AFL-CIO

2524. All prior agreements indicate they were between the Employer/Petitioner and the international unions involved i.e. either the Amalgamated Clothing and Textile Workers or Unite. In other words, neither Local 2524 nor the Southern Region were specifically mentioned in the agreements. However, Southern Region Joint Board asserts that they have all been signed by officers of the Southern Region in their capacity as officers of the Joint Board, not as officers of the international.

does not, without more, call into question the continuity of a certified bargaining representative." *New York Center for Rehabilitation Care*, 346 NLRB 447, 447 (2006), enf. 506 F.3d 1070 (D.C. 2007). See also, *Laurel Baye/Healthcare of Lake Lanier*, 346 NLRB 159 (2005), enf. 209 Fed Apx. 345 (4th Cir. 2006). Additionally, in *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143 (2007), the Board decided, in light of the Supreme Court's decision in *NLRB v. Financial Institution of America Local 1182 (Seattle-First)*, 475 U.S. 192 (1986), under what circumstances a union affiliation or merger may relieve an employer of its obligation to recognize and bargain with an incumbent union. In *Raymond F. Kravis*, the Board abandoned the "due process" component of the two-prong test that it had applied in the past and decided that henceforth, the sole criteria would be "substantial continuity" in the operations of the union that sought to represent the unit employees both before and after the affiliation or merger. The Board noted that ". . . when there is a union merger or affiliation, an employer's obligation to recognize and bargain with an incumbent union continues unless the changes resulting from the merger or affiliation are so significant as to alter the identity of the bargaining representative." The Board reasoned that if it is determined that the post-affiliation union lacks a substantial continuity with the pre-affiliation union, a question concerning representation is raised and the employer is not required to recognize the union. Conversely, in cases in which there is a substantial continuity between the pre-affiliation and post-affiliation union, the post-affiliation union is largely unchanged from the pre-affiliation entity, i.e., nothing has happened to the union that would reasonably lead one to believe that the employees no longer support it, no question concerning representation would be raised. *Id.* at 447.

In assessing whether there is "substantial continuity," the Board considers whether the change is sufficiently dramatic to alter the union's identity in the context of the totality of the circumstances. *May Department Stores*, 289 NLRB 661, 665 (1988), enf. 897 F.2d 221 (7th Cir. 1990) and *Mike Basil Chevrolet*, 331 NLRB 1044 (2000). Even though the substantial continuity test in *Raymond F. Kravis* has only been applied to affiliation and merger cases, the standards articulated in the above-cited cases would logically apply to the instant matter since disaffiliation is merely the opposite of affiliation.

Applying the substantial continuity test reveals that the decisions of the Southern Joint Board and Local 2524 to disaffiliate from UNITE HERE, join Workers United and affiliate with SEIU do not raise a question concerning representation. These decisions have not altered the identity of the bargaining representative. The undisputed evidence reveals that the officers and representatives historically representing employees have remained the same. Furthermore, an overwhelming majority of the members of Local 2524 have unequivocally expressed their support from the disaffiliation from Unite Here and to be represented by the Southern Region and Local 2524.

In conclusion, inasmuch as the Employer and Southern Region are in agreement as to the identity of the bargaining representative, inasmuch as there has been substantial continuity in the identity of the unit employees' collective bargaining representative since the disaffiliations, and because Unite Here does not claim to represent the Employer/Petitioner's employees, I find that the decisions of the Southern Region and Local 2524 to disaffiliate from UNITE HERE do not raise a question concerning representation.

Accordingly, for the reasons set forth above,

IT IS HEREBY ORDERED that the petition be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 - 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **January 25, 2010** at 5 p.m. (ET) unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:50 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the “File

Documents" button under Board/Office of the Executive Secretary and then follow the directions. The Responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Atlanta, Georgia this 11th day of January 2010.

_____

Martin M. Arlook, Regional Director
National Labor Relations Board
233 Peachtree Street, NE
Harris Tower, Suite 1000
Atlanta, Georgia 30303

FORM NLRB-877

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

SAM LICHTENBERG & CO., INC.

Employer

and

CASE **10-RM-867**

UNITE HERE LOCAL 2524

Petitioner

DATE OF MAILING: February 3, 2010

AFFIDAVIT OF SERVICE OF:. DECISION AND ORDER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by postpaid first-class mail upon the following persons, addressed to them at the following addresses:

Served By Facsimile or Regular Mail:

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Subscribed and sworn to before me this	**DESIGNATED AGENT**
11th day of January, 2010.	**NATIONAL LABOR RELATIONS BOARD**

NATIONAL LABOR RELATIONS BOARD
233 PEACHTREE STREET N.E.
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ATLANTA, GA 30303
(404) 331-2896

FAX TRANSMISSION COVER PAGE

DATE: **February 3, 2010**	Re: **DECISION AND ORDER** **Case 10-RM-867**
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